COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

JOHN T. MUENCH

Plaintiff

Case No. A-8508744

-vs-

EAGLE SAVINGS ASSOCIATION

Defendant

and

HASSAN MOTORS, INC.

Defendant and
Third-Party Plaitiff

MEMORANDUM

OF

DECISION

STATEMENT OF FACTS

The plaintiff John T. Muench purchased a 1979 Porsche 924 automobile from the defendant Hassan Motors. Hassan acquired the vehicle from Compact City, Inc., who purchased it from Indiana Auto Auction. After Muench was involved in an accident he was informed that the vehicle was "clipped" -- formed by welding the frames of two different vehicles together which is not performed according to the manufacturer's standards. The vehicle could not be repaired after the accident. Eagle Savings Association is a defendant in the case because it holds the security agreement between Muench and Hassan Motors.

Hassan has filed a motion for summary judgment based on the undisputed fact that it did not know the vehicle was "clipped." Muench's motion for summary judgment stands on the fact that Hassan

had reason to know of the clippin , Eagl Savings Association' motion for summary judgment involves the terms of the installment contract and security agreement assigned to Eagle by Hassan.

DISCUSSION

The question to be decided is whether Hassan Motors committed unfair or deceptive, or unconscionable sales practices by selling this "clipped" vehicle to the plaintiff, and so violated O.R.C. 1345.02 or 1345.03.

In Brown v. Bredendeck, 2 O.O.3d 286 (1975) the Court of Common Pleas of Franklin County held that intent to deceive is not a prerequisite to a violation of O.R.C. 1345.02. The Court further stated that the seller's intent or knowledge at the time he makes representations to the buyer is irrelevant. "A deceptive act or practice is such as has the likelihood of inducing a state of mind in the consumer that is not in accord with the facts." Id, at 287. In that case the defendant owned a magazine and delivered only one, two or three issues of 12 promised to suppliers. He argued that this was not intentional but due to economic factors.

The case of Brown v. Sun Furniture and Appliance Company, 11 O.O.3d 26 (1978) also held that intent to deceive was not required for a violation of O.R.C. 1345.02. The Court of Appeals for Hamilton County stated three reasons this was found to be true. First, the word "intent" is not found in the statute. Second, O.R.C. 1345.03 requires acts to be done "knowingly" and third, O.R.C. 1345.11 excuses the seller of an O.R.C. 1345.02 violation if he can show the violation was the result of a bona fide error. Id. at 28.

In Clayton v. McCary, 426 F.Supp. 248 (N.D. Ohio 1976) the defendant did not violate O.R.C. 1345.03 when he made a statement to the buyer that a vehicle was in "A-number-one" condition because the defendant did not know it was a misleading statement at the time he made it.

From the above discussion the defendant did not violate O.R.C. 1345.03 and commit an unconscionable act because the defendant did not know the vehicle was "clipped" when sold to the plaintiff. This statute requires knowledge and does not extend liability if the supplier had reason to know.

However, knowledge or intent does not appear to be a prerequisite to a deceptive or unfair act that violates O.R.C. 1345.02. A violation of O.R.C. 1345.02 occurs when statements are made that represent that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses or benefits that it does not have, O.R.C. 1345.02(B)(1), or that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not, O.R.C. 1345.02(B)(2).

In Brown v. Bud Fletcher Used Cars, Inc., Case No. A8201791 (Hamilton County Common Pleas 1982, unreported) the Court stated:

> "The acts or practice of a motor vehicle dealer of selling what he knows, or should know, to be an unsafe motor vehicle to another dealer, who subsequently will make that vehicle available to the consuming public, without disclosing the hazardous condition of that vehicle prior to sale to that dealer is unfair, deceptive ..."

In the case at hand the "clipping" was obvious and the defendant made the vehicle available for sale to the consuming public and should have know of its condition. The defenant therefore committed a deceptive sales practice and so violated O.R.C. 1345.02(B)(1) and (B)(2).

In addition, to the above consumer transaction Hassan entered with Mr. Muench, Hassan also assigned its installment contract and security agreement to the defendant Eagle Savings Association. This assignment of the above contract is subject to a clause which requires Hassan to purchase the contract from Eagle, upon demand, if there is any breach of warranty or if a party obligated to pay the contract asserts a claim against Eagle. In the instant case both of the above conditions are present; Hassan has violated the deceptive sales practice act, which is akin to a statutory warranty and a claim has been asserted against Eagle by Mr. Muench, the party obligated to pay on this installment contract.

Further, this contract provision is neither unconscionable or ambiguous. To the contrary it is a standardized contract repurchase and indemnification clause that lending institutions such as Eagle use as a matter of practice.

In accordance with the foregoing analysis the Court grants the plaintiff John Muench's motion for summary judgment based upon O.R.C. 1345.02 and denies the defendant Hassan's motions for summary judgment as they apply to both the plaintiff Muench and the defendant Eagle Savings. Further, Eagle Savings' motion for summary judgment is granted as to the net balance of $8,527.07 and the reasonable expenses and costs listed in the affidavit of James D. Wolfe.

Counsel shall present an entry to the Court in accordance with this memorandum by April 9, 1987.

Donald L. Schott, Judge